



Control Number: 26381



Item Number: 170

Addendum StartPage: 0



DOCKET NO. 26381

PETITION OF UTEX
COMMUNICATIONS CORPORATION
FOR ARBITRATION PURSUANT TO
SECTION 252(b) OF THE FEDERAL
TELECOMMUNICATIONS ACT AND
PURA FOR RATES, TERMS, AND
CONDITIONS OF
INTERCONNECTION AGREEMENT
WITH SOUTHWESTERN BELL
TELEPHONE COMPANY

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PUBLIC UTILITY COMMISSION
OF TEXAS

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PUBLIC UTILITY COMMISSION

ORDER NO. 32

Ruling on ICA Language

Order No. 30 struck certain ICA language proposed by each party because the language was new, not agreed, and not the result of a change in law. The parties were unable to agree upon the implementation of that order. This order clarifies the ICA language and DPL issues that are at issue in this proceeding.

AT&T Texas states that it did not include various ICA language and DPL issues proposed by UTEX because the language and issues were not contained in the parties' February 18, 2010 filing.¹ The Panel's orders were not intended to suggest, however, that a party could not revert to its 2005 ICA language and DPL issues. Order No. 30 disallowed certain language and issues that differed from the parties' 2005 filings but did not disallow the 2005 filings themselves. For this reason, the Panel concludes that the ICA at issue in this proceeding consists of the ICA filed by AT&T Texas on March 19, 2010, with the following modifications.

- Attachments, appendices, and exhibits proposed by UTEX shall be ordered in the manner proposed by UTEX.
- Language from UTEX's proposed pricing schedule shall be included in the ICA only to the extent that UTEX included that language in its Second Amended Petition.

¹ AT&T Texas' Response to Order No. 31 at 4 (Mar. 23, 2010) ("Order No. 30 does not permit either party to add any DPL issues to be arbitrated beyond those presented in the February 18, 2010 filing. To the contrary, Order No.

- It appears that AT&T Texas included UTEX document “2 UNE E Appendix1toBusinessEnhancementUNE.doc” in its March 19, 2010 filing. That document shall be added to the ICA if AT&T Texas has not already included it.
- UTEX documents “2 UNE F Appendix2toBusinessEnhancementUNE.doc” and “2 UNE G Appendix3toBusinessEnhancementUNE.doc” shall be added to the ICA.
- AT&T Texas appears to assert that it included UTEX’s proposed language for NIM, NIM 1, 2, 5, and 6 and ITR in ICA documents filed by AT&T Texas on March 19, 2010 that were titled “17 . . .”, “18 . . .”, “19 . . .”, “22 . . .”, “23 . . .”, and “24 . . .”² UTEX’s proposed language for those documents shall be added to the ICA if AT&T Texas has not already included them.
- UTEX documents “3 NIM D . . .”, “3 NIM E . . .”, “3 NIM F . . .”, “3 NIM G . . .”, “3 NIM H . . .”, and “3 NIM I . . .” shall be added to the ICA.³
- Attachment E to AT&T Texas’ Response to Order No. 31 shall be added to the ICA. UTEX did not challenge AT&T Texas’ version of the appendix, and UTEX’s version of the appendix does not reflect the fact that AT&T Texas disputes it.

Ruling on DPL Issues

Consistent with the above discussion, the Panel concludes that the DPL at issue in this proceeding consists of the DPL filed by AT&T Texas on March 19, 2010 as document “Clean - ATT UTEX DPL Clean for Filing 031910.doc,” with the following modifications.

- The language described in UTEX Pleading in Response to Order No. 31 ¶¶ 14.a, 14.b, 14.c, 14.e, 14.g, 14.h, and 14.i shall be added to the DPL.
- Issue UTEX UNE-1 shall be added to the DPL. This issue was contained in UTEX’s Second Amended Petition.
- The call flow diagrams from UTEX’s Second Amended Petition filed as document “BR DPL Exhibit 3” shall be added to the DPL. The Panel declines to

30 recognizes that Order No. 27 stated that parties could change the ICA provisions and DPL issues to be submitted by the parties on February 18, 2010 only if the change is agreed to or supported by change of law.”).

² For the full file names, *see* AT&T Texas’ Reply to UTEX’s Response to Order No. 31 at 10 (Mar. 24, 2010).

add the call flow diagrams filed at pages 115-161 of UTEX's March 19, 2010 filing because page 128 of those diagrams (titled "Note for Call Flows 1-6") and the language populating the column titled "UTEX's Understanding of AT&T Intent" were not included in UTEX's Second Amended Petition. The Panel understands that AT&T Texas has not previously provided its positions regarding the issue statements contained in the call flow diagrams. AT&T Texas may provide its positions in the joint DPL to be filed pursuant to this order.

- It appears that AT&T Texas included UTEX Issue 50 in its March 19, 2010 filing. That issue shall be added to the DPL if AT&T Texas has not already included it.

UTEX appears to challenge a change made by AT&T Texas to AT&T GTC Issue 28.⁴ But the change made by AT&T Texas actually removed language that UTEX found objectionable in a draft DPL circulated prior to the March 19, 2010 filing. AT&T Texas reverted to its earlier language to cure UTEX's objection, and UTEX fails to provide any basis for rejecting the change. For these reasons, the Panel declines to order any modifications to that issue.

UTEX's Request for Extension of Deadline to Respond to AT&T Texas' Response to Order No. 31

In its response to Order No. 31, UTEX requests "an additional 10 days to submit the second filing contemplated by Order No. 31. UTEX should be given a reasonable period to respond to AT&T's filing due today."⁵ UTEX also stated that it "does not seek any further modifications to the current schedule or pending deadlines."⁶ The Panel notes that it has imposed short deadlines to facilitate the expeditious resolution of this proceeding. In its Motion to Unabate Docket, UTEX requested that "the Commission immediately unabate this case and arrange for resumed processing so as to conclude all determinations within 9 months of October 9, 2009, *i.e.*, by July 9, 2010."⁷ UTEX's request for an extension, if granted, would not allow the Panel to issue an order regarding the contract documents and DPL issues at issue in this

³ For the full file names, *see id.* at 11.

⁴ UTEX Pleading in Response to Order No. 31 and Request for Additional Time ¶ 14.d (Mar. 23, 2010).

⁵ UTEX Pleading in Response to Order No. 31 and Request for Additional Time at 11.

⁶ *Id.*

proceeding until after direct testimony is due.⁸ Without knowing the issues in the case and the contract language in dispute, the parties would not be able to prepare testimony effectively. In addition, AT&T Texas was subject to the same deadlines as UTEX in Order No. 31 and UTEX has not agreed to extend other deadlines for this proceeding. The Panel also notes that UTEX devoted a large portion of its initial pleading to an unproductive and unprofessional diatribe against AT&T Texas and the Panel and made no effort in that pleading to meet Order No. 31's requirement to include an explanation of why the excluded language it identified should have been included in AT&T Texas' filing in compliance with Order No. 30.⁹ The Panel concludes that the deadlines contained in Order No. 31 were reasonable and have not deprived UTEX of due process.

For these reasons, UTEX's request for an extension is **DENIED**.

Updated ICA Language and DPL Issues

The parties shall file updated ICA language and an updated joint DPL consistent with this order no later than March 26, 2010.

Modifications to the Procedural Schedule

The procedural schedule for this arbitration is modified as indicated below. All other deadlines remain the same.

Event	Deadline
Direct Testimony	March 31, 2010
Objections to Direct Testimony	April 2, 2010

⁷ Motion to Unabate Docket at 1 (Nov. 17, 2009).

⁸ An additional ten days from March 24, 2010, the deadline established in Order No. 31 for UTEX's reply, would be Saturday, April 3. The first working day after that date is Monday, April 5. Direct testimony in this case is due on March 29, and rebuttal testimony is due on April 7, 2010.

⁹ Although this Order No. 32 rules largely in UTEX's favor, the Panel commends AT&T Texas' effective and professional approach in its filings in response to Order No. 32.

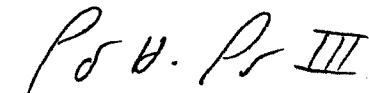
SIGNED AT AUSTIN, TEXAS on the 25th day of March, 2010.



DAVID B. SMITHSON
ARBITRATOR



MEENA THOMAS
ARBITRATOR



PATRICK H. PETERS III
ARBITRATOR